

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISIDICIION
WRIT PETITION NO.5057 OF 1996

The Morarjee Gokuldas Spg. & Wvg. Co.Ltd.
Unit No.2, Ganpatrao Kadam Marg
Lower Parel, Mumbai-400013 ..Petitioner

Vs.

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| 1. | Dudhnath Rajnarayan
Yadav, Schoolwali Chawl,
Room No.28, Globe Mill
Passage Road, Mumbai
400013 | |
| 2. | The Presiding Officer
9th Labour Court, Mumbai
having his office at
Arun Chambers, 6th floor
Tardeo, Mumbai-400034 | |
| 3. | Shri.G.R.Bawiskar
Member Industrial Court
Maharashtra at Mumbai
having his office at
Arun Chambers, 7th floor
Tardeo, Mumbai-400034 | .. Respondents |

Mr.S.M.Naik with Mr.Sailesh More for Petitioners
Ms.M.D.Buch for Respondent no.1.

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CORAM : B.H.MARLAPALLE, J.

DATE : FEBRUARY 28, 2005

ORAL JUDGMENT:

1. This petition arises from the judgment and order of the Labour Court in Application (BIR) 1032 of 1984 and subsequently confirmed by the Industrial Court in Appeal (IC) No. 135 of 1993 on 15.6.1996.

2. The respondent-employee had addressed to the company a notice of approach on 7.8.1984 and/or 31.8.1984 and prayed for reinstatement with full backwages. The same notice was replied by the petitioner-Management vide letter dated 26.11.1984 informing him that he was dismissed from service vide order dated 27.9.1982. The employee, therefore, approached the Labour Court for the relief of reinstatement with full backwages and continuity of service with effect from 7.8.1984. The said application was opposed by the petitioner-Management by filing its written statement at Exh.-C-2. It was contended that the application was not tenable as the approach letter was sent beyond limitation, with reference to the order of dismissal dated 27.9.1982. It was further contended that the approach notice dated 7.8.1984 and/or 31.8.1984 was hopelessly time barred and therefore, the application was required to be dismissed on that ground alone. On merits it was contended that all the workmen of the Mill had gone on strike from 18.1.1982 and the same was declared to be illegal by the Labour Court vide its order dated 11.2.1982. The said order was published in the local newspapers informing all the employees that the strike was illegal and therefore, they were called upon to report for duty. The applicant failed to report for duty in response to the said advertisement

and as he did not report for duty, he was guilty of participating in an illegal strike which is a misconduct.

3. Admittedly, the dismissal order dated 27.9.1982 was not preceded by a charge-sheet or domestic enquiry. The cut off date fixed by the tripartite negotiations, was on 31.5.1983 and all the workers were required to report for duty. On 4.6.1983 the Rastriya Mill Mazdoor Sangh reached an understanding by the Mill Owners' Association with the Union. The workman contended before the Labour Court that he was continuously visiting the employer Mill and the watchman on duty used to inform him that he would be called back as and when the Management decided to take back the employees on strike. He also stated that on few days, he used to stand in the queue and he was never allowed to report for duty, even after the cut off date. But others were allowed to report for duty. He had also submitted that few dismissed workmen were also reinstated.

4. These rival contentions were considered by the Labour Court and issues were framed. The first issue regarding the limitation was answered in favour of the applicant and against the Management. On the second issue regarding the legality, propriety and justifiability of the dismissal order dated

27.9.1982, the Labour Court held against the employer and therefore, directed the reinstatement. However, the Labour Court considered the acts of the applicant and more particularly, his statement that he was attending the Mill from 18.1.1982 till 7.8.1984, did not appear to be believable. On this presumption, the employee was denied 50% backwages as per the judgment and order dated 23.7.1993. The employer went in Appeal before the Industrial Court. The Industrial Court considered the evidence of the employee at Exh.U-6 and the company's witness who deposed at Exh.C-5. The documentary evidence in terms of the employee's application dated 7.8.1984 received by the Management on 13.8.1984, the approach notice dated 31.8.1984 and the reply thereto dated 26.11.1984 and the dismissal order dated 27.9.1982 were also considered. In his depositions, the employee had clearly stated that he had never received the dismissal order dated 27.9.1982 before he had approached the Labour Court whereas, the witness of the Management had stated that the said dismissal order was sent by certificate of posting and show-cause notice was also issued before the said dismissal order was passed. Thus, there was no evidence to show that either show cause notice or the dismissal order was served properly on the employee and the same was received by him.

5. The Labour Court held that almost every employee had participated in the strike which was subsequently declared to be illegal and the employee was not an active member of the Union. In fact, he was a passive participant in the strike. The employee was reporting for duty from the date of strike and even after the strike was called off. The Management had denied this submission but did not bring on record any documentary proof regarding the register kept with the watchman or any diary etc. The Labour Court therefore, accepted the employee's contention that he was reporting for duty but was not allowed to join. The Industrial Court on appreciation of evidence, held that there was nothing to show that the respondent-employee had participated in the illegal strike. The dismissal order was not consequent to the issuance of any charge-sheet or a domestic enquiry and therefore, the Labour Court held that the dismissal order was illegal. This finding of the Labour Court was confirmed by the Industrial Court.

6. On the issue of limitation, both the Courts below have set out sound reasoning to hold that the application was not time barred. The concurrent findings recorded by both the Courts below do not suffer from any error apparent on the face of the record. During the pendency of this petition, the employee came to be reinstated and therefore, the

only issue that remained to be decided was regarding the relief of 50% backwages. The Labour Court has rightly granted 50% backwages from 7.8.1984 i.e. the date of first approach notice and the earlier period has not been taken into consideration which means that from 27.9.1982 to 7.8.1984 the benefit of backwages has been denied. In the case of *Oriental Textile Finishing Mills, Amritsar and Labour Court, Jullundur and others reported in II L.L.J.504*, a three Judge Bench of the Supreme Court held inter alia that merely because the workmen went on strike, the Management's action in terminating their services, would not be justified. The dismissal order purported to have been issued by the Management in the instant case, was also for the reasons that the employee continued to participate in an illegal strike and failed to report for duty inspite of the appeals made by the Management. The evidence on record shows that other employees were reinstated by the Management and the present respondent was reporting for duty and was standing in the queue infront of the Mill's gate. Every time he was sent back and this could not be rebutted by the Management by reliable evidence through its witness.

7. Under the circumstances, the challenge to the concurrent findings recorded by both the Courts below does not call for interference while exercising the

supervisory jurisdiction under Article 227 of the Constitution of India and therefore, this petition must fail. The same is hereby dismissed. Rule discharged with no order as to costs.

8. As per the order dated 24.9.1997 passed by this Court, the employee was directed to be paid full backwages from 26.6.1996 till he was reinstated. Ms.Buch, the learned counsel for the employee submitted that the workman would be entitled to full backwages from the date of the decision of the Labour Court i.e. 23.7.1993 on the basis of the theory of 'relating back'. If that be so, the employee may take out appropriate proceedings for recovery of backwages.

9. Oral application for stay to this order, is hereby rejected.

10. Certified copy expedited.

[B.H.MARLAPALLE, J.]